



May 16, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 02-55

Dear Ms. Dortch:

This letter and the accompanying *Submission of RCC Consultants, Inc., respecting a Fundamental and Unacknowledged Problem in the Use of the Cost Statistics Compiled by the 800 MHz Transition Administrator as Guidance in Evaluating the Reasonableness, Necessity, and Propriety of Costs Incurred in Connection with the 800 MHz Rebanding* are being filed electronically for inclusion in the public record of the above-entitled proceeding.

Very truly yours,

A handwritten signature in blue ink that reads 'Carl Robert Aron' followed by a stylized flourish.

Carl Robert Aron
Executive Vice President

RCC Consultants, Inc.

100 Woodbridge Center Drive • Woodbridge, New Jersey 07095-1125 • tel (732) 404-2400 • fax (732) 404-2556

Submission of RCC Consultants, Inc. Respecting a Fundamental and Unacknowledged Problem in the Use of the Cost Statistics Compiled by the 800 MHz Transition Administrator as Guidance in Evaluating the Reasonableness, Necessity, and Propriety of Costs Incurred in Connection with the 800 MHz Rebanding

I. Introduction

RCC Consultants, Inc. (“RCC”), respectfully offers this *Submission of RCC Consultants, Inc., respecting a Fundamental and Unacknowledged Problem in the Use of the Planning Cost Statistics Compiled by the 800 MHz Transition Administrator as Guidance in Evaluating the Reasonableness, Necessity, and Propriety of Planning Costs in Connection with the 800 MHz Rebanding* (this “Submission”) in order to identify and consider what RCC believes to be an important, but unintended, consequence of effort of the Federal Communications Commission (the “Commission”) to address the knotty problem of nondisclosure in relation to certain agreements made by parties affected by WT Docket 02-55 (the “800 MHz Rebanding”).

On January 8, 2007, the Commission adopted an order (DA 07-27) in the 800 MHz Rebanding relating to the disclosure or exchange of information between 800 MHz public Safety licensees concerning planning funding agreements (“PFAs”) and frequency relocation agreements (“FRAs”) between such licensees and Sprint Nextel Corporation (“Sprint Nextel”) (that order, the “January 2007 Disclosure Order”).

The January 2007 Disclosure Order sought properly to address the problems created for the exchange and disclosure of information concerning PFAs and FRAs by Sprint Nextel’s generally successful efforts to include a nondisclosure provision in such agreements. (January 2007 Disclosure Order, at ¶¶ 1-3) The Commission found that the inability of such licensees to exchange or disclose such information “impedes the good faith obligations the Commission imposed upon both Sprint and incumbent licensees.” (January 2007 Disclosure Order, at ¶ 4)

RCC does not in any manner disagree with the Commission’s recognition of this disclosure problem or those portions of the January 2007 Disclosure Order that relieve 800 MHz public safety licensees of restrictions upon their ability to exchange and disclose information concerning PFAs and FRAs (and most of the January 2007 Disclosure Order is directed to that point). This Submission does, however, reflect certain concerns of RCC respecting the statistics compiled by the 800 MHz Transition Administrator (the “TA”) pursuant to the January 2007 Disclosure Order.

The Commission, “to provide further guidance to public safety licensees in upcoming negotiations,” directed “the TA to publish aggregated information regarding median costs for the

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key common elements of PFAs and FRAs that it has approved, broken down by the size and complexity of the public safety system.” (January 2007 Disclosure Order, at ¶ 9)

The Commission then indicated its belief that “this information will provide a baseline for all cost negotiations and thereby help speed resolution of cost issues.” (January 2007 Disclosure Order, at ¶ 9) RCC has serious reservations respecting the salutary effect of the availability of the indicated statistical information anticipated by the Commission. The reservations of RCC in this respect stem from two sources:

First, while the inability of public safety licensees to exchange and disclose information concerning PFAs and FRAs was very troubling and while Sprint Nextel’s efforts (based upon claims of lower comparable costs of other unidentified licensees) to resist cost claims of licensees with which Sprint Nextel was negotiating or in mediation were patently improper (and generally so recognized by TA mediators), neither that trouble nor that impropriety accounts, in the view of RCC, for the difficulties experienced by 800 MHz public safety licensees in negotiating PFAs and FRAs with Sprint Nextel. This view of RCC is fully supported by the truly remarkable letter of counsel to Sprint Nextel filed with the Commission on April 20, 2007, together with “Sprint Nextel’s Proposal to Streamline 800 MHz Band Reconfiguration” (the “Sprint Nextel Proposal”).

The Sprint Nextel Proposal offers, in substance, the following explanation for the difficulties experienced by licensees in negotiating PFAs and FRAs with Sprint Nextel: For the 21 months of the negotiation process, Sprint Nextel felt compelled by its interpretation of the applicable law to resist all claims by licensees for planning or reconfiguration costs that were not clearly shown to be the “absolute lowest cost.” RCC makes no comment here upon the Sprint Nextel Proposal, except to note that its recognition of the effect of the hard position on costs adopted by Sprint Nextel (whatever the reason therefor) provides, in the view of RCC, a more convincing explanation for the difficulties experienced by licensees in negotiating PFAs and FRAs with Sprint Nextel than does the Commission’s implied attribution of such difficulties in some material way to the inability of licensees to exchange and disclose information concerning PFAs and FRAs with Sprint Nextel. This conclusion of RCC is fully consistent with the letter filed with the Commission on May 9, 2007, by six national public safety organizations in response to the Sprint Nextel Proposal. (Letter of the Association of Public-Safety Communications Officials, the International Association of Chiefs of Police, the International Association of Fire Chiefs, the Major Cities Chiefs Association, the Major Counties Sheriffs Association, and the National Sheriffs Association)

Second, “aggregated information regarding median costs for the key common elements of PFAs and FRAs” is by its very nature skewed and offers the potential for misuse or abuse because all such information is in truth and in fact no more than information about what Sprint Nextel deems to be acceptable costs. No costs become a part of that “aggregated information regarding median

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costs for the key common elements of PFAs and FRAs” unless Sprint Nextel has agreed with respect to the costs (or there would be no PFA or FRA from which to aggregate costs and determine median costs therefrom). No information is included in “aggregated information regarding median costs for the key common elements of PFAs and FRAs” respecting (i) the costs proposed by licensees that have been unable to reach agreements with Sprint Nextel or (ii) the planning costs of licensees that have chosen not to seek planning funding from Sprint Nextel and have included their planning costs in FRA negotiations. For these reasons, “aggregated information regarding median costs for the key common elements of PFAs and FRAs” consists entirely of information handpicked by Sprint Nextel and information about costs for PFAs and FRAs that were agreed during the 21-month period when Sprint Nextel was applying its admittedly very hard line in relation to costs from the claimed necessity for which the Sprint Nextel Proposal seeks relief from the Commission and the TA.

Accordingly, “aggregated information regarding median costs for the key common elements of PFAs and FRAs” is fraught with statistical defects and was developed during a period when Sprint Nextel admittedly and vigorously resisted all claims by licensees for planning or reconfiguration costs that were not clearly shown to meet the highest possible standard -- the “absolute lowest cost” – rather than “reasonable and prudent” standard now viewed by Sprint Nextel as proper in the Sprint Nextel Proposal.

The statistical deficiencies of the statistics compiled by the TA and the dangers inherent in the use thereof are the subject of the balance of this Submission

II. The Defects Inherent in the TA Planning Statistics and the Potential for Their Misuse or Abuse – Not Matters of Mere Academic Interest

On February 8, 2007, the TA issued *Cost Metrics for Licensee Planning Funding* (Version 1.0) (the “TA Planning Statistics”) pursuant to the January 2007 Disclosure Order.

On March 26, 2007, the TA issued *Cost Metrics for Frequency Reconfiguration Agreements* (Version 1.0) (the “TA Reconfiguration Statistics”) also pursuant to the January 2007 Disclosure Order. This Submission will address primarily the TA Planning Statistics. The TA Reconfiguration Statistics are addressed briefly in Section IV of this Submission.

In the introduction to the TA Planning Statistics, the TA reiterates uncritically and without examination the view expressed by the Commission that “this information should prove beneficial to stakeholders in expediting the preparation and negotiation of Planning Funding requests.” (In the introduction to the TA Reconfiguration Statistics, the TA makes a very similar statement.)

For the reasons explained in this Section II, RCC respectfully submits that no weight whatsoever can properly be given to the TA Planning Statistics by a TA mediator or by the

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Commission on *de novo* review in assessing the reasonableness of the planning costs sought by an 800 public safety licensee.

The demonstration of this conclusion is not a matter of academic interest. First, Sprint Nextel has relied upon the TA Planning Statistics in resisting planning funding requests of 800 MHz public safety licensees ("PFRs"). Sprint Nextel has continued to rely upon those statistics even after the filing of the Sprint Nextel Proposal that provides clear indication that those statistics reflect the results of an approach (the "absolute lowest cost" approach) that Sprint Nextel would prefer no longer to apply and that the Commission, in its second order on *de novo* review in relation to the City of Manassas, Virginia, expressly disavowed. In that second order, the Commission wrote that certain disputed costs should be paid by Sprint Nextel because doing so, rather than spending more substantial resources for prolonged mediation "is consistent with the Commission's 'minimum reasonable cost' standard." (*Memorandum Opinion and Order, In the Matter of City of Manassas, Virginia, and Sprint Nextel, Mediation No. TAM-12007, WT Docket No. 02-55, DA 07-1999, adopted May 3, 2007, at ¶ 17*) (that pronouncement, the "Second Manassas MOO")

Second, in the Second Manassas MOO, the Commission placed some degree of reliance upon the TA Planning Statistics without addressing the statistical defects inherent therein and drew inferences therefrom and based conclusions thereon which were improper for the reasons explained below.

III. The Limitations of and Defects Inherent in the TA Planning Statistics When Used as Evidence in a Dispute relating to Planning Costs

RCC does not claim that the TA Planning Statistics were improperly compiled, but, rather, that no inferences respecting the planning funding requests of licensees that have not entered PFAs with Sprint Nextel can be properly drawn from the TA Planning Statistics which were compiled only from data respecting licensees that have entered into PFAs with Sprint Nextel.

The TA Planning Statistics are based upon a sample that is not representative of the universe of planning funding requests or even the universe of proper levels of planning funding requests for all licensees seeking planning funding. The unrepresentative nature of the TA Planning Statistics follows from, among other factors, the compilation of the TA Planning Statistics only from data respecting licensees that have entered into PFAs with Sprint Nextel.

The unrepresentative nature of the TA Planning Statistics is both clear in principle and demonstrable in fact. The TA has provided other planning funding statistics in its *Quarterly Progress Report for the Quarter Ended December 31, 2006* (February 19, 2007) (the "4Q Status Report"). The statistics provided in the 4Q Status Report, as demonstrated hereinbelow in this Appendix, establish beyond peradventure or doubt that the TA Planning Statistics are not

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representative of the requests for planning funding made by licensees that have not entered PFAs with Nextel. Indeed, the comparison of the TA Planning Statistics and the statistics set forth in the 4Q Status Report strongly suggests that the TA Planning Statistics are representative only of the requests for planning funding that Sprint Nextel thought were very much on the low side and, therefore, acceptable.

It is not possible, consistent with intellectual honesty, to argue that the TA Planning Statistics (compiled as they are from PFAs Sprint Nextel found acceptable), either by themselves or in light of the statistics provided in the 4Q Status Report, could properly be used as a basis to challenge the planning funding requests of licensees, which requests Sprint Nextel does not find acceptable. The use of the TA Planning Statistics against any 800 MHz public safety licensee is entirely improper and inconsistent with proper and professional use of statistics.

The use of the TA Planning Statistics would involve what are referred to as "inferential statistics," which is a statistical methodology or technique that uses measurements of a sample to reach conclusions about a larger population. The use of the TA Planning Statistics as inferential statistics against any 800 MHz public safety licensee would be entirely improper because the TA Planning Statistics simply do not meet the generally recognized standards for inferential statistics.

That impropriety is demonstrated in two independent arguments as follows:

- **The No Permissible Inference Argument: Reliance upon an Unrepresentative, Biased, and Otherwise Inadequate Sample and the Problem of Self-selection; and**
- **The Improper Inference Argument: The Distinction between Transactional Information and Factual Information and the Problem of Treating Negotiated Estimates of Costs as Evidence of Actual Costs.**

These arguments are developed in Section II.A and B of this Submission, below.

A. The No Permissible Inference Argument: Nextel's Reliance upon an Unrepresentative, Biased, and Otherwise Inadequate Sample and the Problem of Self-selection

Inferential statistics depend entirely upon the quality of the sample used. If the sample is not proper, then either:

- no inferences at all can be drawn from the improper sample about a larger population; or
- any inferences drawn from the improper sample about the larger population will not have a high degree of reliability.

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The TA Planning Statistics are meaningful in assessing the planning funding requests of an 800 MHz public safety licensee that is not included in those statistics (an “Non-included Licensee”) if and only if:

- the sample on which the TA Planning Statistics are based is representative of licensees in circumstances comparable to the Non-included Licensee;
- the sample on which the TA Planning Statistics are based is not biased; and
- the sample on which the TA Planning Statistics are based is not demonstrably incomplete or skewed.

The sample upon which the TA Planning Statistics are based is demonstrably not a sample from which any inferences at all can be drawn about the planning costs of any Non-included Licensee (*i.e.*, any member of the unmeasured population) because:

- the sample has not been and cannot be shown to be representative;
- the sample can easily to shown to be fundamentally biased;
- the sample is demonstrably partial and plainly skewed; and
- the sample was taken under circumstances no longer applicable (if ever they properly were).

1, The Sample Has Not Been and Cannot Be Shown to Be Representative.

The TA has not identified or provided information respecting the licensees that entered the PFAs that are the subject of the TA Planning Statistics. Non-included Licensees against which the TA Planning Statistics may be cited have no access to information that could be reviewed by the Non-included Licensees with respect to the planning funding requests of those licensees which are included in the TA Planning Statistics or the judgments made by those licensees with respect to the entry into PFAs with Sprint Nextel.

The TA has made no apparent effort to establish that the sample upon which the TA Planning Statistics are based is a representative one if applied to Non-included Licensees. In the absence of a showing that the licensees used in the sample are in all material respects comparably situated to the Non-included Licensees, no inferences about a particular Non-included Licensee or any other licensee in the unmeasured population or about the unmeasured population as a whole can properly or confidently be drawn.

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Moreover, while the TA has demonstrated no comparability whatsoever, even if substantial comparability had been shown, such comparability would not be enough to enable proper and reliable inferences from the sample upon which the TA Statistics are based to be drawn about a particular Non-included Licensee or any other licensee in the unmeasured population or about the unmeasured population as a whole can properly or confidently be drawn. Even if the licensees included in the TA Planning Statistics were 'similarly situated' to a particular Non-included Licensee, there will never be an identity or even near identity between the situation of a particular Non-included Licensee and the situation of any other licensee, the PFA of which is included in the compilation of the TA Planning Statistics with respect to the requirements of planning funding. Both objective and subjective factors preclude truly comparable situations in fact:

- Objective factors:
 - The age of the radio equipment employed;
 - The state of the records respecting system configuration and number and variety of subscriber units for which the inventory is to be developed and the difficulty of securing additional required information;
 - The number of base stations employed and the challenges associated with the reconfiguration thereof;
 - The number of subscriber units employed and the challenges associated with the reconfiguration thereof;
 - The specific configuration of risks associated with the reconfiguration of the licensee's radio system;
 - The specific hazard environment within which the licensee's radio system operates;
 - The degree of reliance of public safety agencies upon the licensee's radio system in routine operations and in the event of emergency; and
 - The complexity of the interoperability arrangement to which the licensee is a party and the number and diversity of the agencies that use the licensee's radio system and the accessibility and cooperation of the persons in those agencies.
- Subjective factors:
 - The skill and diligence of the persons engaged in the development of the planning funding request;
 - The importance attached by the licensee to the collection of accurate and complete information for the development of the request for planning funding;
 - The instructions respecting the care to be taken in the development of the planning funding request; and

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- The extent to which the licensee deems it necessary to have detailed information for the purposes of planning for the logistics and coordination of the process.

Therefore, it would be improper to draw inferences respecting the planning funding request (“PFR”) of a Non-included Licensee from the TA Planning Statistics even if, as has not been shown, the licensees in the TA Planning Statistics were situated substantially similarly to that Non-included Licensee.

2. The Sample is Undeniably Biased.

The TA Planning Statistics are undeniably biased, and that bias should be apparent to the TA and the Commission. That bias should have been acknowledged by the TA in order that consideration could be given to the dangers inherent in the reliance by TA mediators or others upon the TA Planning Statistics. The transparency of that bias is evident from the fact that the TA Planning Statistics include only costs with which Sprint Nextel has agreed. The range of estimated costs included in the TA Planning Statistics includes *only* estimated costs of licensees with which Nextel has entered PFAs. **The sample is, therefore, biased in the most fundamental sense: it only includes results acceptable to Sprint Nextel.**

The application of a range of results acceptable to Sprint Nextel to licensees that have not reached PFAs with Sprint Nextel creates an unsupportable presumption in favor of the views of Sprint Nextel and precludes that fairness upon which due process in any form of dispute resolution depends.

Moreover, the application of a range of results acceptable to Sprint Nextel to licensees that have not reached PFAs with Sprint Nextel is meaningless and improper because it is the assertion that the costs sought by the licensees are high BECAUSE they do not fall into the range of results Sprint Nextel finds acceptable.

The PFR of a particular Non-included Licensee cannot properly be compared only to costs Nextel likes, but should, rather, be compared to the assertions of costs by all similarly situated licensees, including both those, if any, that are included in the TA Planning Statistics and those, if any, of other Non-included Licensees (which costs Nextel has rejected).

The TA Statistics cannot be used to establish that the planning costs sought by a particular Non-included Licensee:

- are improperly high;
- deviate materially from some proper and acceptable norm; or
- are high in relation to the costs sought by any or all similarly situated licensees.

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Therefore, the TA Planning Statistics say everything about what Sprint Nextel is willing to pay in relation to planning funding, but nothing at all about the propriety of the costs claimed by any Non-included Licensee other than the trivial assertion that those costs fall outside the range of what is acceptable to Sprint Nextel.

3. The Sample is Demonstrably Partial and Plainly Skewed.

The sample underlying the TA Planning Statistics is demonstrably biased and skewed not only because, as demonstrated above, it includes only planning costs in the range acceptable to Sprint Nextel, but also because, as demonstrated below, the sample is not representative of the planning costs of all licensees that have sought planning funding from Sprint Nextel.. The demonstration of the latter point shall be made here by reference to the planning funding statistics provided by the TA in the 4Q Status Report and a comparison thereof to the TA Planning Statistics.

The partial and skewed nature of the sample upon which the TA Planning Statistics depend would be made clear if it could be shown that the statistics for deals not made involve larger claims than those reflected in the TA Planning Statistics, which include only deals made. That showing can be made utilizing the statistics provided in the 4Q Status Report.

The following analysis is based upon the data provided at page 17 of the 4Q Status Report:

- To December 31, 2006, Nextel negotiated 190 PFAs with 190 licensees of which 183 were public safety licensees;
- The total value of the agreed PFAs was \$23.3 million;
- Therefore, the average planning cost agreed by Nextel was \$122,631.58;
- Between February 1 and December 31, 2006, PFRs were filed with the TA by 395 licensees;
- Those 395 licensees sought in the aggregate \$85.2 million in planning costs;
- Therefore, the average planning costs sought by those licensees was \$215,696.20;
- Therefore, the average planning costs sought by licensees filing PFRs from February 1 to December 31, 2006, is 1.76 times the average PFA settlement made through December 31, 2006 by Sprint Nextel and 190 licensees;
- If the 395 licensees agreed to settle for 75% of the amount they sought, they would receive on average 1.32 times the average amount agreed by Sprint Nextel;

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- If the 395 licensees agreed to settle for 85% of the amount they sought, they would receive on average 1.5 times the average amount agreed by Sprint Nextel;
- If the 395 licensees agreed to settle for 95% of the amount they sought, they would receive on average 1.67 times the average amount agreed by Sprint Nextel; and
- If RPFs generally settle for 75% or more of the amount requested, then the outstanding RPFs will be expected to settle for substantially more than those agreed PFAs.

The analysis above may understate that substantiality because some of the settled 190 are among the filed 395, and the removal of the settled cases would likely raise the average RPF-level of the unsettled cases.

The analysis above may also understate that substantiality because not all planning costs are the subject of RPFs, and some of the most involved and expensive planning has proceeded without PFAs' being sought.

It is, therefore, absolutely plain that the statistics for deals not made involve larger claims than those reflected in the TA Planning Statistics, which include only deals made. It follows ineluctably that the TA Planning Statistics are partial and skewed if used to support inferences with respect to the planning funding requests of Non-included Licensees, *i.e.*, those with which Sprint Nextel has not entered PFAs.

The degree of that partial and skewed nature of the TA Planning Statistics depends substantially upon the discount ultimately to be made to the planning funding requests of the Non-included Licensees. The lower the discount is, the higher the degree of incompleteness and skewing.

For these reasons, no inferences can be reliably drawn in relation to the RPFs of Non-included Licensees from the TA Planning Statistics even if, as is not the case, those statistics were representative and not biased.

4. The Sample Was Taken under Circumstances No Longer Applicable.

The sample underlying the TA Planning Statistics was, as shown above, developed during a period when Sprint Nextel admittedly and vigorously resisted all claims by licensees for planning or reconfiguration costs that were not clearly shown to meet the highest possible standard -- the "absolute lowest cost" -- rather than "reasonable and prudent" standard now viewed by Sprint Nextel as proper in the Sprint Nextel Proposal. Accordingly, the sample represents what Sprint Nextel used to believe, but now no longer, believes is the proper test for the reasonableness and propriety of planning costs. The TA Planning Statistics are, therefore,

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fatally dated as they were developed under circumstances and using standards that are no longer applicable (if ever they properly were).

Therefore, no proper inferences against Non-included Licensees can properly be drawn from the essentially stale and dated TA Planning Statistics.

B. The Improper Inference Argument: The Distinction between Transactional Information and Factual Information and the Problem of Treating Negotiated Estimates of Costs as Evidence of Actual Costs

Even if, contrary to fact:

- the TA had identified all relevant information concerning the data points making up the TA Planning Statistics,
- the sample underlying the TA Planning Statistics were a representative sample for the purposes of drawing inferences about Non-included Licensees,
- the sample underlying the TA Planning Statistics had not been biased by the inclusion in the sample of only data points acceptable to Sprint Nextel,
- the sample underlying the TA Planning Statistics were not incomplete and skewed, and
- the sample underlying the TA Planning Statistics were not stale and dated,

it would still not be proper to draw inferences respecting what any particular Non-included Licensee's estimates of planning costs should be or what that licensee's actual costs will be from that sample of negotiated estimates. It is obvious that inferences from proper samples can be improper. Here, the issue is drawing improper inferences from an improper sample, and those inferences would still be improper even if the sample had been entirely proper. This conclusion follows from confusion of:

- transaction information (information with respect to PFAs) with independent estimates of planning costs; and
- estimates of planning costs with the real costs of planning.

These fatal confusions are addressed separately in Sections III.B.1 and 2 of this Submission, below.

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1. Information about a Transaction (and only an aspect thereof) vs. Information about Estimates

The fact that a transaction was entered into that reflected agreement on an estimate of planning costs between Sprint Nextel and some licensee is not evidence of an estimate that should be relevant to the assessment of any other 800 MHz public safety licensee. The estimate of planning costs in an agreement between Sprint Nextel and a licensee is the product of a bargaining process and not an indication of or evidence that:

- the bargained-for and agreed-upon estimate will be accurate for the licensee that is the party to that agreement or, a fortiori,
- the bargained-for and agreed-upon estimate between Sprint Nextel and one licensee will be accurate for any other licensee that is not a party to that agreement even if that other licensee were situated similarly to the licensee that was the party to the agreement with Sprint Nextel.

The TA Planning Statistics are the product of a bargaining process and are no more than information about transactions (PFAs) and the net effect of the negotiation dynamics that led to agreement on those estimates. There is no way to know whether in the bargaining process that led to the estimates that are included in the TA Planning Statistics:

- The negotiating skills of the licensees were considerable or modest;
- The licensees bargained as hard as possible and did not compromise on their true view of an accurate estimate;
- The licensees cared or did not care about whether they recovered all planning costs; or
- The licensees relied upon the change order process to correct estimates at a level they thought were too low, but at a level that Nextel would accept.

All anyone can know about the estimates agreed upon is that they were agreed upon for whatever reason. However, that transaction information says nothing at all about the accuracy of the agreed-upon estimate for the licensee that agreed thereto and certainly nothing about the applicability of the agreed-upon estimate of one licensee to the estimate of another licensee not a party to that agreement.

2. Information about an Estimate vs. Information about Real Costs

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The use of *estimates* of licensees included in the TA Planning Statistics to show what the *actual costs* of a particular Non-included Licensee will be is improper on several grounds. Those grounds, explained below, make clear that there is essentially little or no reason to believe that an estimate of planning costs will prove to be accurate for the licensee that made or agreed to the estimate and absolutely no reason to believe that estimate is relevant to another licensee.

First, an estimate is just that - an estimate. Until the planning is completed, there is no way to know whether the untested estimate is, in fact, accurate. Therefore, there is no basis for treating the estimate of one licensee as evidence of the actual costs of that licensee much less the actual costs of some other licensee and, particularly, a Non-included Licensee.

Second, the accuracy of an estimate (before it is tested by the performance of the task estimated) is related to the estimating skills of the preparer of the estimate. There is no evidence offered by the TA in the TA Planning Statistics respecting the estimating skills of the persons who prepared planning cost estimates for the licensees with which Sprint Nextel entered PFAs. Therefore, there is no basis for treating the estimate of one licensee as evidence of the actual costs of that licensee much less the actual costs of some other licensee and, particularly, a Non-included Licensee.

Third, even if the licensees which entered PFAs with Sprint Nextel were 'similarly situated' to a particular Non-included Licensee, there will never be an identity between the situation of the particular Non-included Licensee and the situation of any other licensee with respect to planning costs because both objective and subjective factors preclude identical situations in fact as was shown above.

IV. The TA Reconfiguration Statistics

The TA Reconfiguration Statistics suffer from the same defects as the TA Planning Statistics.

With respect to the TA Reconfiguration Statistics, the following conclusions apply:

- the TA has not identified all relevant information concerning the data points making up the TA Reconfiguration Statistics,
- the sample underlying the TA Reconfiguration Statistics is not a representative sample for the purposes of drawing inferences about Non-included Licensees,
- the sample underlying the TA Reconfiguration Statistics is clearly biased as a result of the inclusion in the sample of only data points acceptable to Sprint Nextel,

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- the sample underlying the TA Reconfiguration Statistics is very likely incomplete and skewed, and
- the sample underlying the TA Planning Statistics is stale and dated.

Those conclusions follow from essentially the same analysis applied in Section III.A of this Submission to the TA Planning Statistics. Accordingly, it would not be proper to draw inferences respecting what any particular Non-included Licensee's estimates of reconfiguration costs should be or what that licensee's actual costs will be from that sample of negotiated reconfiguration estimates.

Any such inferences would also be improper because they would be based upon the confusion of:

- transaction information (information about FRAs) with independent estimates of reconfiguration costs; and
- estimates of reconfiguration costs with the real costs of reconfiguration.

Those conclusions also follow from essentially the same analysis applied in Section III.B of this Submission to the TA Planning Statistics. Accordingly, it would again not be proper to draw inferences respecting what any particular Non-included Licensee's estimates of reconfiguration costs should be or what that licensee's actual costs will be from that sample of negotiated reconfiguration estimates.

V. Conclusion

For the reasons explained in this Submission, RCC respectfully submits that no weight whatsoever can properly be given to the TA Planning Statistics or the TA Reconfiguration Statistics by a TA mediator or by the Commission on *de novo* review in assessing the reasonableness of the planning or reconfiguration costs sought by an 800 public safety licensee.